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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA, ) No. CR 07-0678 JSW  
Plaintiff, )  
v. )  
GLENIO JESUA FERREIRA SILVA, )  
Defendant. )  
\_\_\_\_\_  
)

**STIPULATION AND [PROPOSED]  
ORDER FOR TAKING OF RULE 15  
MATERIAL WITNESS DEPOSITIONS**

The parties now stipulate and request that the Court enter an Order pursuant to Fed. R. Crim. P. 15 permitting the taking of deposition of material witnesses GERALDO RODRIGUES and ANDREA FERREIRA DESOUZA.

On June 15, 2007, the Honorable Bernard Zimmerman issued a complaint and arrest warrant charging the defendant with one count of Alien Harboring, in violation of 8 U.S.C. § 1324(a)(1)(A)(iii); and on October 7, 2007, Silva was indicted in a one-count indictment charging the same.<sup>1</sup> (*ECF Document Nos. 1, 21*). The complaint alleged that Silva knowingly

<sup>1</sup> The Complaint was docketed as CR 03-07-70345 BZ.

1 employed illegal aliens at his businesses and permitted several illegal aliens, including  
2 GERALDO RODRIGUES and ANDREA FERREIRA DESOUZA, to live in make-shift  
3 apartments above his businesses.

4 On January 15, 2008 and February 20, 2008, RODRIGUES and DESOUZA were each  
5 arraigned on a complaint charging a violation of Title 18, United States Code, section 1028(a)(7)  
6 - Unlawful Use of an Identity Document.<sup>2</sup> Each waived a detention hearing on the complaint  
7 and remains in custody. On March 4, 2008, after the United States submitted an Application  
8 pursuant to Title 18, United States Code, section 3144, the Honorable Joseph C. Spero issued  
9 material witness arrest warrants for RODRIGUES and DESOUZA in connection with the above-  
10 captioned matter. (*ECF Document No. 30*). On March 11 and 12, 2008, DESOUZA and  
11 RODRIGUES, respectively, appeared before the Honorable Joseph C. Spero. Each was advised  
12 of the material witness arrest warrant and was afforded an opportunity to seek release pursuant to  
13 Title 18, United States Code, section 3142. (*ECF Document No. 31, 32*). And each witness  
14 waived the right to a detention hearing without prejudice to seek release at a later time.

15 The United States now moves, pursuant to Fed. R. Crim. P. 15(a)(1), for an Order  
16 permitting the taking of material witness depositions of RODRIGUES and DESOUZA in  
17 connection with the above-captioned matter. Fed. R. Crim. P. 15(a)(1) provides that:

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19 a party may move that a prospective witness be deposed in  
20 order to preserve testimony for trial. The court may grant  
the motion because of exceptional circumstances and in the  
interest of justice.

21 Courts have routinely held that continued detention of a material witness pending trial  
22 constitutes an “exceptional circumstances” as contemplated by Fed. R. Crim. P. 15(a) and is a  
23 basis to permit the taking of a deposition. United States v. Lai Fa Chen, 214 F.R.D. 578, 580  
24 (N.D. Ca. 2003). Further, this Circuit has held that “No material witness shall be detained  
25 because of inability to comply with conditions of release if the testimony of such witness can

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28 <sup>2</sup> These cases were docketed as CR 07-70347 BZ and CR 07-70346 BZ, respectively.

1 adequately be secured by deposition ..." Bacon v. United States, 449 F.2d 933 (9<sup>th</sup> Cir. 1971).  
2 To date, no trial date has been set in this matter. The parties contend that the continued  
3 detention of RODRIGUES and DESOUZA through the time of trial would constitute  
4 "exceptional circumstances" and that permitting a deposition is in the interests of justice.

5 Accordingly, the parties request an Order permitting the taking of the deposition of  
6 material witnesses GERALDO RODRIGUES and ANDREA FERREIRA DESOUZA pursuant  
7 to Fed. R. Crim. P. 15(a). The parties intend to take these depositions in the following manner:  
8 In addition to the witness, defendant Silva and counsel for the United States, Silva, and the  
9 material witness being deposed will be present. The witnesses will be assisted, as will defendant  
10 Silva, by a certified Portuguese interpreter. With respect to objections, all objections except as  
11 to form will be reserved until the time of trial. Finally, the proceedings will be recorded by a  
12 stenographer and video and audio-recorded.

13  
14  
15 SO STIPULATED:

16 JOSEPH P. RUSSONIELLO  
17 United States Attorney

18 DATED: March 18, 2008

19 /s/  
20 DENISE MARIE BARTON  
21 Assistant United States Attorney

22 DATED: March 18, 2008

23 /s/  
24 STEVEN GRUEL  
25 Attorney for GLENIO SILVA

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STIPULATION AND [PROPOSED] ORDER FOR TAKING OF RULE 15 MATERIAL WITNESS  
DEPOSITIONS - CR 07-0678.

## [PROPOSED] ORDER

For the reasons stated in the foregoing stipulation, the Court finds that the continued detention of material witnesses GERALDO RODRIGUES and ANDREA FERREIRA DESOUZA through the time of trial in the above-captioned matter constitutes “exceptional circumstances” under Fed. R. Crim. P. 15(a) and that the taking of depositions of RODRIGUES and DESOUZA is in the interests of justice. Accordingly, this Court orders that the depositions of GERALDO RODRIGUES and ANDREA FERREIRA DESOUZA be taken in accordance with Fed. R. Crim. P. 15 in the manner set forth above.

Dated:

HONORABLE JEFFREY S. WHITE  
United States District Court Judge